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case had plaintiff been in her own home and surrounded by her own family and servants. There was nothing in the peculiar offices or duties of their profession requiring defendants or either of them to assume the responsibility of carrying or wheeling the patient between her room and the operating room," or to accompany her, unless it might have been for the purpose of administering restoratives or something of the kind, which it does not appear was necessary in this case. The dissenting judge concludes, and, as it seems to the writer, with much reason to sustain him, that the holding of the prevailing opinion must operate to increase greatly, and to an extent not justified by the law, the liability of the medical profession, and further that to charge the absent partner, under the circumstances disclosed, is an unwarrantable extension of the doctrine of agency as applied to partners. In this particular also the dissenting opinion commends itself to the writer, "Even if we assume," says the opinion, "that the former (Dr. L. B. Morton) was wheeling the car at the time of the accident, though it is conceded he was not, he was engaged, not in the business of the partnership, but was voluntarily doing or assisting in the work of a hospital attendant. His partner was not present, took no part in the service being performed at the time, and should be exonerated from all liability."

H. B. H.

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MUNICIPAL TAXATION BY APPOINTIVE BOARDS OR COMMISSIONERS.—Of late years there has been a growing tendency on the part of state legislatures to deprive the regular municipal officers of certain powers or functions, and delegate those powers to local commissioners who hold office by appointment, not by election. The powers as granted may be very broad or carefully limited. They range from a grant of the entire government of the city, as in the case of Galveston, to a mere delegation of the power to manage water-works or a police department. The question is primarily political and social, but the desire for complete local self-government has brought the constitutionality of such legislation before the courts. This is especially true where the commissioners are given the power to levy taxes. Constitutional provisions, the numberless statutes, the extent of the powers granted and the purposes for which they are granted are so varied in the different states that it is difficult to deduce many definite principles from the cases. Nevertheless certain conflicting views stand out more or less clearly.

The question came before the Supreme Court of Kansas in the case of *Wulf v. Kansas City* (1908), — Kan. —, 94 Pac. Rep. 207. By statute cities above a given population were required to maintain a system of parks and boulevards which were to be under the power and control of a board of park commissioners, appointed by the Mayor. Broad power was conferred upon this board. It could purchase and sell property, create and provide for the payment of debts, draw warrants on the city treasurer, levy taxes not exceeding one-half mill on the dollar on the taxable property of the city, and could, with certain limitations, issue bonds of the city. Taxpayers brought suit to enjoin the levy of the tax provided for in the act. The court in an exhaustive opinion, while recognizing the conflict on the fundamental question involved, held that the power of the legislature was absolute in

the absence of an express limitation by which an implied limitation could be sustained, and that there was no implied limitation upon the power of the legislature over parks and boulevards, or upon its power to create a board of park commissioners and delegate the power of taxation to it.

The question is primarily constitutional and involves the construction of state constitutions, seldom the federal constitution. GRAY in his *LIMITATIONS OF THE TAXING POWER*, § 638, divides the decisions into three classes: Cases in which the power of the legislature over its municipalities is held to be practically unlimited in the absence of express constitutional restriction; cases in which local self-government is sustained as being inherent in the local subdivisions; and cases which recognize this right as regards matters of local concern but "differ as to what are matters of purely local concern." It is between the decisions of the first two classes that the conflict on constitutional construction is most clearly brought out. On the one hand it is claimed that the state constitution is a grant of limitations, not a grant of powers and the legislature is supreme in the absence of an express restriction. At the other extreme is the view that every state constitution has an implied limitation in favor of local self-government which prevents legislative interference. This last view is said to have had its source in *People v. Hurlbut*, 24 Mich. 44, where the question was discussed. It is followed in *State ex rel. v. Barker*, 116 Ia. 96; *State ex rel. Geake v. Fox*, 158 Ind. 126; *City of Lexington v. Thompson*, 113 Ky. 549; *People v. Common Council of Detroit*, 28 Mich. 228; *Blades v. Water Com'rs*, 122 Mich. 366, 379; *State v. Moores*, 55 Neb. 480, overruled by *Redell v. Moores*, 63 Neb. 219 and *Ex parte Lewis*, 45 Tex. Cr. R. 1, which the Supreme Court of Texas declined to follow in *Brown v. City of Galveston*, 97 Tex. 1. It is denied or ignored in *Cole v. Gray*, 7 Houst. (Del.) 44, 84; *Churchill v. Walker*, 64 Ga. 681; *Americus v. Perry*, 114 Ga. 871; *People ex rel. v. Walsh*, 96 Ill. 232; *Baltimore v. State*, 15 Md. 376; *Redell v. Moores*, (supra) and *Brown v. City of Galveston*, (supra). In *State v. Smith*, 11 Nev. 128, while there is no violation of the principles of local self-government the court apparently considers the legislature supreme.

But this theory of implied limitations finds its most powerful and reasonable support where the power to tax is delegated to the appointive board. It is said that the taxing power is sovereign and legislative and that there is an implied prohibition against its delegation by the legislature which is fully as binding as if it were expressly written in the constitution. "There is an implied limitation upon the power of the legislature to delegate the power of taxation." *State v. Mayor*, 103 Ia. 76, 89. It is said "when the constitution creates a department, on which sovereign power is conferred, the grant is exclusive, except as its delegation may be authorized by the granting instrument . . . . Whoever, in such case, asserts competency to delegate, assumes the onus to show constitutional authority express or implied." *Schultes v. Eberley*, 82 Ala. 242. Other cases to the same effect are *Barnes v. Lacon*, 84 Ill. 461; *Vallelley v. Board of Park Com'rs* (1907), — N. D. —, 111 N. W. Rep. 615; *Levee District v. Dawson*, 97 Tenn. 151, 174. *Com'rs of Wyandotte Co. v. Abbott*, 52 Kan. 148, would seem, in the

last analysis, to rest on this view. On the other hand the power to delegate the taxing power is recognized or taken for granted in *Commissioners v. State*, 45 Ala. 399; *Baltimore v. State*, 15 Md. 376; *State v. West Duluth Land Co.*, 75 Minn. 456; *People ex rel. v. Flagg*, 46 N. Y. 401; *Brown v. City of Galveston*, 97 Tex. 1. It has been held that the commissioners are not officers of the city, but, it would seem, are agents of the legislature to act for it in collecting the taxes. *Astor v. Mayor*, 62 N. Y. 567; *David v. Portland Water Committee*, 14 Ore. 98; *Philadelphia v. Field*, 58 Pa. St. 320.

The cases which fall under Gray's third class hold that the legislature has complete power over matters of general or governmental concern, but that over those of purely local concern legislative control is impliedly limited by the right to local self-government. This recognizes the dual nature of municipal corporations. They are, at the same time, both general governmental, political instruments and the instrument of local self-government with some of the rights and franchises of a corporation. The police are generally held to be under legislative control. *Churchill v. Walker*, 68 Ga., 681; *Baltimore v. State*, 15 Md. 376; *Newport v. Horton*, 22 R. I. 196; So also are streets and roads. *People ex rel. v. Walsh*, 96 Ill. 232; *People ex rel. v. Flagg*, 64 N. Y. 401; The fire department on the other hand is considered a matter of purely local concern. *State ex rel. v. Denny*, 118 Ind. 449; *State ex rel. v. Fox*, 158 Ind. 126; *Lexington v. Thompson*, 113 Ky. 540. So also is the matter of a water supply in *State ex rel. v. Barker*, 115 Ia. 96; and in *Blades v. Water Com'rs*, 122 Mich. 366. The contrary is held in *Cole v. Gray*, 7 Houst. (Del.) 44, and in *David v. Portland Water Committee*, 14 Ore. 98. Parts, under consideration in the principal case, are held to be local in nature in *People v. Common Council of Detroit*, 28 Mich. 228 and *Valleley v. Board of Park Com'rs* (1907), — N. D. —, 111 N. W. Rep. 615, but they are considered of general interest and subject to legislative control in *Astor v. Mayor*, 62 N. Y. 567 and *State v. West Duluth Land Co.*, 75 Minn. 456. It is difficult, if not impossible, to state where the weight of authority lies with regard to the points involved, but it cannot be denied that the delegation of broad powers to boards or commissions is becoming more and more common. Municipal politics seem to demand it, and the states will go even to the lengths of a constitutional amendment to get it.

F. B. F.

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THE RIGHT OF A MARRIED WOMAN TO RECOVER FOR PERSONAL INJURIES.— Plaintiff's wife was injured through the negligence of defendant. Plaintiff brought this action to recover for the injuries. The action was dismissed, and on exceptions by plaintiff, held, that where during coverture a wife suffers personal injury either from the direct act of the wrongdoer by use of force, or from his negligence, the wife alone, by reason of the statutes conferring upon her absolute control over her person and the right to sue as if sole, can maintain an action for the damages sustained which upon recovery become her separate property. *Hey v. Prime* (1908), — Mass. —, 84 N. E. Rep. 141.

At common law the wife could not maintain a suit to recover damages